IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

MACA.No. 319 of 2003

AGAINST THE ORDER DATED 31/12/2002 IN OPMV 388 /1998 IN OPMV.389/1998 of MOTOR ACCIDENT CLAIMS TRIBUNAL, KASARAGOD

.....

APPELLANT/PETITIONER:

C.A.MOHAMED SHAFI, AGED 45 YEARS,
SON OF C.A.HASSANKUTTY, P.W.D. CONTRACTOR,
CHEMNAD FERRY ROAD, PULIKUNNU, KASARAGOD.

BY ADV. SRI.SHIRAZ ABDULLA
SRI.IMTHIYAZ AHAMED

RESPONDENTS: RESPONDENTS:
---

1. SANJAYAN K., SON OF THAMBAN NAMBIAR,
182, KOTACHERY, P.O. KANHANGAD, HOSDURG TALUK.

2. RADHA MADHAVAN K.T.,
WIFE OF LATE PROF. MADHAVAN NAIR, ASHWATHI,
P.O. PADANNAKKAD, KANHANGAD.

3. THE MANAGER,
UNITED INDIA INSURANCE CO. LTD., BRANCH OFFICE,
KOTACHERY, KANHANGAD.

BY ADV. SMT.NARAYANIKUTTY CHETTOOR

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD ON 28.9.2007, THE COURT ON 28/09/2007 PASSED THE FOLLOWING:

J.B.KOSHY & K.HEMA,JJ.

M.A.C.A.NO. 319 OF 20O3

Dated this the 28th day of September, 2007

JUDGMENT

Koshy, J.

The appellant filed a claim petition before the Motor Accidents Claims Tribunal contending that a car bearing registration No.KBE-9180 driven by the first respondent rashly and negligently got into the property of the appellant through the gate from nearby road and dashed into his car parked in the car porch of his building and hit against the pillars of his residential building causing extensive damages to his vehicle and also the structure of the building. The appellant's residential building sustained heavy damages such as front car porch and varandha R.C.C pillars by peeling of plastering and concrete collapsed and walls of front floor and first floor living hall, office room adjoining super structural walls, roof slab etc. developed hairline cracks. He spent more than Rs.4,50,000/- for repairing the house. The Tribunal, though found that there was valid insurance and the Insurance Company is liable to pay compensation, only Rs.6,000/- was awarded as the damages. He has produced Exhibit A9 cash vouchers to show that he spent the amount as

claimed towards the repairs effected. The Tribunal did not believe the same on the ground that it styled as vouchers and it is fabricated and the only evidence worth mentioning with respect to the damages to the building is the photos. But there is survey report by the Engineer, who is a licenced surveyor and loss assessor. The survey report is marked as Exhibit A4. The total amount of loss assessed and recommended by the Engineer was Rs.2,88,750/-. In the written statement of the Insurance Company in paragraph 4 it is stated as follows:

> "4.The damage claimed by the petitioner is highly excessive and unreasonable. The petitioner put to strict proof regarding the expenditure incurred for the repair of the house and the nature of accident. The model of the building is an old model and so there is depreciation of the materials. The investigation and survey conducted by this respondent states that the total approximate damage of the building including the purchase of material and repair charge is Rs.1,06,000/- (Rupees One Lakh Six Thousand only) subject to depreciation of the material. So the amount claimed by the petitioner is highly excessive and unreasonable."

So, even according to the Insurance Company, the approximate damage to the building is Rs.1,06,000/-. It is not a claim for any damages against the Insurance Company, but it is a third party claim. The owner of the car has got liability to put the house in proper form and there is no question of deducting the compensation

as it has to repair at the expense of the driver and owner of the vehicle and that liability is insured by the third respondent Insurance Company. Here, the third respondent Insurance Company itself filed a counter stating that the approximate damage is only Rs.1,06,000/-, though Rs.3,00,000/- was claimed by the petitioner. In the above circumstances, we are of the opinion that atleast Rs.1,06,000/- assessed by the Insurance Company should have been awarded. But the Tribunal awarded only Rs.6,000/-. The balance amount of Rs.1,00,000/- should be deposited by the third respondent Insurance Company with 7% interest from the date of application to the date of deposit.

The appeal is allowed, partly.

J.B.KOSHY, JUDGE

K.HEMA, JUDGE

vgs.

J.B.KOSHY & K.HEMA, JJ.

M.A.C.A.NO.319 OF 2003

JUDGMENT

28.9.2007